contract. The evidence showed that the defendant never intended to keep the promise. *Held,* that though this contract was induced by a fraudulent promise, and the situation was parallel with cases where goods were purchased by insolvents and relief was given, yet the court is concluded by the decision of the Supreme Court on this point, and relief must be refused. *Missouri Loan & Investment Co.* v. *Federal Trust Company of St Louis,* (Mo. App., 1913) 158 S. W. 111.

The general rule is that an unperformed promise does not amount to fraud. To constitute fraud there must be a misrepresentation of a present or past fact. But a promise made to induce another to act upon it and with no intention of carrying it out, is a representation that the promisor intends to carry it out, and as such may be a misrepresentation of his present state of mind which is a present fact, and by the better rule is held to constitute fraud. There are two general lines of authority, one holding that a promise, made to induce another to act, and without intention to fulfil, is fraud; *Ansley* v. *Bank of Piedmont,* 13 Ala. 467; *Langley* v. *Rodrigunez,* 122 Cal. 580; *Ayres* v. *French,* 41 Conn. 142; *National Bank of Lancaster* v. *Mackey,* 5 Kan. App. 437; *Wilson* v. *Eggleston,* 27 Mich. 257; *Culbertson* v. *Young,* 86 Mo. App. 277; *Abbott* v. *Abbott,* 18 Neb. 503; *Goodwin* v. *Horne,* 60 N. H. 485; *Troxler* v. *Building Co.,* 137 N. C. 51; *Chicago, Texas & Mexican Central R. R.* v. *Titterington,* 84 Tex. 218; *Pollock* v. *Sullivan,* 53 Vt. 507; *Tanner* v. *Clark,* 13 Ky. L. Rep. 922; *Janes* v. *Trustees of Mercer University,* 17 Ga. 515. The following cases have held that a promise, though not kept, was not such a fraudulent representation as would be ground for relief, since it is not a representation of an existing or past fact:—*Hirsch* v. *Hirsch,* 21 Ark. 342; *Adams* v. *Schiffer,* 11 Colo. 15; *Haenni* v. *Bleisch,* 146 Ill. 262; *Day* v. *Fort Scott Investment and Improvement Co.,* 153 Ill. 293; *State Bank of Indiana* v. *Gates,* 114 Ia. 323; *Balue* v. *Taylor,* 136 Ind. 368; *Fouty* v. *Fouty,* 34 Ind. 433; *Long* v. *Woodman,* 58 Me. 49; *Dawe* v. *Morris,* 149 Mass. 188; *Hodsden* v. *Hodsden,* 69 Minn. 486; *Farrington* v. *Bullard,* 40 Barb. (N. Y.) 512; *Witt* v. *Cuenol,* 9 N. M. 143; *Orr* v. *Goodloe,* 93 Va. 263; *Milwaukee Brick & Cement Co.* v. *Schoknecht,* 108 Wis. 457; *Younger* v. *Hoge,* 211 Mo. 444, 111 S. W. 20, which last decision compelled the court to follow this rule in the principal case. The conflict is more in the language used than in the principles applied. Generally where there is a promise, made fraudulently and without intention to keep it, it will furnish a basis for the rescission of the contract. See also 14 AM. & ENG. ENCYC. 53; *Cerny* v. *Paxton & Gallagher Co.,* 78 Neb. 134, 110 N. W. 882, 10 L. R. A. N. S. 640 and note.

CORPORATIONS—LIABILITY FOR SLANDER BY EMPLOYE.—Defendant corporation operated a theatre. Plaintiff attended one of the performances by virtue of a ticket duly purchased, and, while lawfully in attendance, was invited to the stage by a performer in the course of one of the acts. While plaintiff was on the stage the performer, in the presence and hearing of the audience, addressed insulting and defamatory remarks to him. *Held,* the corporation is liable for the slander. *Interstate Amusement Co.* v. *Martin* (Ala., 1913) 62 So. 404.

The decision is based upon the fact that the uttering of the words by the performer was a breach of a contractual duty between the corporation owning and operating the theatre and the plaintiff, and the principle involved is not at all settled. The earlier cases held that the corporation could not be held for the slander of its agent, on the ground that the corporation can act only by agent and there can be no agency in slander. The opposing views of the courts are well indicated by *Behre* v. *National Cash Reg. Co.*, 100 Ga. 213, 27 S. E. 986, 62 Am. St. Rep. 320, and *Redict* v. *Singer Mfg Co.*, 124 N. C. 100, 32 S. E. 392, holding that the corporation is not liable for the slander of its agent unless it affirmatively appears that the agent was authorized to speak the words in question, even though the agent was at the time acting within the scope of his employment, and by *Rivers* v. *Yazoo etc. R. Co.*, 90 Miss. 196, 43 So. 471, 9 L. R. A. (N. S.) 931, and *Hypes* v. *Southern R. Co.*, 82 S. C. 315, 64 S. E. 395, holding that the corporation is liable though the words were uttered without the knowledge, approval, consent or ratification of the corporation. Probably the weight of authority inclines to the view that where the agent is acting within the scope of his employment the corporation is liable even though the slander was uttered without the knowledge of the corporation, or without its approval, and though the corporation did not ratify the acts of the agent. 5 THOMPSON, CORP. 5441; *P. W. & B. R. R.* v. *Quigley*, 21 How. 210. And even cases holding that a corporation is not generally liable for the slanderous words of its agent recognize the rule that the corporation is liable if the utterance constitutes a breach of duty imposed by contract, as was the situation in the principal case. *Singer Mfg. Co.* v. *Taylor*, 150 Ala. 574.

CORPORATIONS—STOCKHOLDER'S RIGHT TO RESCIND SUBSCRIPTION INDUCED BY FRAUD.—The respondent was induced by the fraudulent representations of the corporation's agent to subscribe for 40 shares of stock. On his discovery of the fraud he gave notice of his rescission to the officers of the corporation, but did not bring suit to annul the subscription. Upon suit being brought by the receiver of the corporation for the unpaid balance of the subscription, respondent set up the fraud as a defense. *Held*, that the defense was proper. *Johns* v. *Coffee* (Wash., 1913) 133 Pac. 4.

To sustain the decision it is necessary to hold that the equities of the defrauded subscriber are equal to those of the creditors of the corporation, and while the English courts and most of the earlier American decisions deny the right of the subscriber to set up the fraud as against the receiver the finding of the court in the principal case seems to be in accord with the trend of the modern decisions and with the thought of text-book writers. COOK, CORPORATIONS (6 Ed.) §§ 163-4. It is conceded that as between the defrauded subscriber and the corporation the subscriber has the right to rescind, and this right is only defeated by the intervention of superior rights of third parties. MARSHALL, CORPORATIONS, § 252; *Howard* v. *Turner*, 155 Pa. St. 349, 35 Am. St. Rep. 883; *Beal* v. *Dillon*, 5 Kan. App. 27, 47 Pac. 317. In many cases where the defrauded subscriber does not bring a suit to have his subscription annulled, but waits until the receiver sues to recover the